

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Mark Eugene Blakely,) Civil Action No. 6:20-2721-BHH
Petitioner,)
)
v.)
)
Betsy Devos, Natalie R. Hunter, Phyllis)
Gibson, Paul Wickenseimer,)
)
Respondents.)
)

)

ORDER

Mark Eugene Blakely (“Petitioner”) filed a *pro se* non-prisoner petition for a writ of mandamus. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), the matter was referred to a United States Magistrate Judge for initial review.

On October 6, 2020, the Magistrate Judge filed a Report and Recommendation (“Report”) outlining the issues and recommending that the Court dismiss the petition without prejudice and without issuance and service of process because this action is not only frivolous, but duplicative of four prior actions filed by Petitioner. (ECF No. 16.) The Magistrate Judge also recommends that Petitioner be sanctioned \$400.00 payable to the Clerk of Court, and if Petitioner tries to file another action prior to paying the sanction, that the Magistrate Judge may (1) instruct the petitioner to pay the sanctions (and if the sanctions are not paid, dismiss the action without prejudice and without issuance and service of process) or (2) certify that the action is not frivolous. (*Id.* at 6.) Attached to the Report was a notice advising Petitioner of the right to file written objections to the Report within fourteen days of being served with a copy. (*Id.* at 7.) To date, no objections have been filed.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation'" (quoting Fed. R. Civ. P. 72 advisory committee's note)).

Here, because no objections were filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. Finding none, the Court agrees that the petition should be dismissed without prejudice and without issuance and service of process.

Therefore, it is ordered:

- (1) that the Petition be dismissed *without prejudice* and without issuance and service of process;
- (2) that Petitioner is sanctioned \$400.00 payable to the Clerk of Court. The Petitioner is directed to mail the check to 300 E. Washington Street, Greenville, SC 29601;
- (3) that if Petitioner tries to file another action prior to paying the sanction, that the Magistrate Judge may (a) instruct Petitioner to pay the sanctions (and if the sanctions are

not paid, dismiss the action without prejudice and without issuance and service of process) or (b) certify that the action is not frivolous.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

November 17, 2020
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.